

APPENDIX J

**CORRESPONDENCE CONCERNING THE UNITED STATES GOVERNMENT'S REQUEST
FOR PERMISSION TO CONDUCT SAMPLING IN CANADA**



July 23, 2001

Mrs. Susan Lysyshyn
-Counsellor
Economic and Environment
Science and Technology Section
Embassy of the United States of America
490 Sussex Drive
Ottawa, ON
K1N 1G8

Dear Mrs. Lysyshyn:

I wish to thank the US Environmental Protection Agency (EPA) for contacting Environment Canada, the Province of British Columbia, and the Department of Foreign Affairs and International Trade regarding their interest in collecting sediment and water samples from the Canadian portion of the Columbia River within the Province of British Columbia. I understand these samples were to assist the EPA in determining whether Lake Roosevelt in the State of Washington should be classified as a US Superfund site.

It is my understanding that cooperation on addressing environmental issues in this region is exemplary. However, it is clear that the EPA's request to collect sediment and water samples in Canada for US Superfund purposes and for potential litigation in the US is different and outside the normal areas of cooperation. Discussions between Canadian and US officials suggest in fact that a request of this nature is without precedent and a guiding framework.

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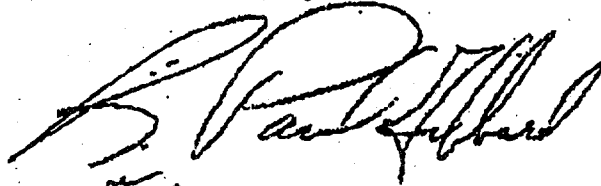
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Of specific interest to the Government of Canada, is how issues concerning reciprocity, sovereignty, and liability will be addressed in the absence of a clearly defined framework. Recognizing the potential implications for both countries, Canada has reservations about proceeding on an ad hoc basis and would recommend that we discuss this matter more fully before addressing the EPA's request.

Yours truly,

A handwritten signature in black ink, appearing to read "Anne Charles", written over a horizontal line.

Anne Charles
Director
United States Transboundary Division

cc: Jenna McKay-Alie, Director (Americas Division), Environment
Canada

Embassy of the United States of America

October 3, 2001



Mr. Bruce Levy, Director
United States Transboundary Division
Department of Foreign Affairs & International Trade
Lester B. Pearson Building, Floor A-6
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Dear Mr. Levy:

I am responding to a letter by Anne Charles of July 23, 2001 addressed to my predecessor, Susan Lysyshyn, regarding the request by the U.S. Environmental Protection Agency (EPA) Superfund program to collect sediment samples from portions of the Columbia River in Canada within the Province of British Columbia. I would like to clarify and more thoroughly explain the purpose, benefits and possible implications of EPA's proposed sampling in Canada, as well as restate my Government's request to perform this sampling.

The EPA Superfund program is undertaking an assessment of contamination in a portion of the Columbia River in Washington State just south of the U.S.-Canada border. EPA is conducting this assessment at the request of the Colville Confederated Tribes and the Spokane Tribe of Indians of Washington State. This also involves the assessment of approximately ninety (90) mines and mills in the U.S. that have been identified as potential contaminant sources to the Columbia River. In order to establish "background" or "reference" concentrations, EPA is seeking to collect sediment samples from locations upstream of potential contaminant sources. Based on the location of potential contaminant sources and the direction of River flow, ideal locations to collect "background" or "reference" samples are near Lower Arrow Lake in Castlegar, B.C. and along the Pend Oreille River in Canada just north of the international boundary. A figure showing the proposed sample locations is provided in Enclosure 1. Further explanation of the sampling proposed, including EPA's intended coordination efforts with the Government of Canada, is provided in Enclosure 2.

Analytical results of sediment samples collected from "background" or "reference" locations in Canada would merely be compared to the results of sediment samples collected from along the Columbia River in the U.S. Samples collected by EPA in the U.S., in comparison to those proposed for collection in Canada, will help determine if some portion of U.S. waters should be prioritized for further investigation and cleanup.

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Accordingly, EPA is seeking to gather data for purposes of site prioritization, not for potential litigation in U.S. courts against Canadian interests.

Additionally, for the information to be useful, it is important that the protocols under which these samples are taken match those of samples collected in the U.S. I assure you that Canada's consent regarding the proposed sampling does not constitute an open-ended commitment to allow future EPA activities in Canadian territory. If EPA determines that additional sampling is required, EPA will again consult with and seek the consent of the Canadian government.

Excellent examples of bi-national cooperation abound, such as the sampling conducted by Environment Canada in the United States near Superfund sites along the Niagara and St. Lawrence Rivers to help fulfill the goals of the Great Lakes Water Quality Agreement. Another demonstration of trans-boundary cooperation includes sampling conducted this year in Canada by the United States Geological Survey and the Washington State Department of Ecology at Lower Arrow Lake in Castlegar.

Finally I wish to point out that collaborative efforts in the Columbia River region between EPA and the British Columbia Ministry of Water, Land and Air Protection (WLAP) already exist through an exchange of information and expertise on unique and complex contaminated sites, such as the coordination of EPA's review of documents related to the first phase ecological risk assessment (ERA) for a contaminated site located along the Columbia River in Trail, B.C. This site in Canada, for which an assessment of the extent and magnitude of contamination is being conducted, includes an "area of interest" extending along the Columbia River from the international boundary to Castlegar. It is important to understand that the "area of interest" being assessed by Canada is immediately upstream of the U.S. portion of the Columbia River currently being assessed by the EPA Superfund program. This example of collaboration in the region demonstrates both countries recognition that contamination issues along the Columbia River extend beyond the international boundary and that in order for each country to better understand the common challenges of contaminated sites of this nature, it is important that information and data be accessible for the mutual benefit of both countries. EPA believes that the results of sediment samples collected from the U.S. portion of the Columbia River and the results of those samples proposed for collection in Canada will provide useful data to the BC Ministry of Water, Land and Air Protection in its assessment of contamination along the Columbia River.

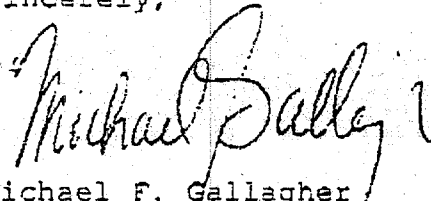
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I hope this clarification of EPA's request addresses the concerns raised in your letter. If you approve EPA to conduct sampling with this clarification, we will inform EPA to proceed in close coordination and communication with Environment Canada and BC Ministry of Water, Land and Air Protection. However, if you have additional questions, and/or desire a meeting or conference call, this office would be happy to coordinate it.

Because it is important for EPA to complete all assessment-related activities within the statutory deadline of August 2002, we look forward to your response to this clarification as soon as possible. If you feel a meeting is required, we would like to meet with you by October 12, 2001. Thank you for your interest in this matter and I look forward to receiving your response.

Finally, I will call your office in the next few days to request an appointment to meet you, as clearly there will be other issues of mutual interest with which we will both be involved in the future.

Sincerely,



Michael F. Gallagher
Environment, Science & Technology
Counselor

Enclosures: As stated.

Cc: Jenna McKay-Alie,
Environment Canada

Enclosure 2

Proposed Sampling by EPA in Canada

What is the purpose of EPA's sampling in Canada?

To collect "background" or "reference" samples in relation to EPA's on-going assessment of contamination along the U.S. portion of the Columbia River south of the International Boundary.

How will the data be used?

Analytical results of the "background" or "reference" samples will be compared to sediment samples collected from the U.S. portion of the Columbia River. This information will help EPA determine if some portion of U.S. waters should be prioritized for further investigation and cleanup.

What sample media/type will be collected?

Surface sediment samples similar in sediment type/grain size to sediment samples collected in the U.S.

What chemical analyses will be conducted on each sample?

Metals, pesticides, and polychlorinated biphenyls (PCBs)

Where are the proposed sample locations? (Please see figure presented in Enclosure 1)

Lower Arrow Lake in Castlegar, B.C.

near Hugh Kennleyside and Brilliant Dams in Castlegar

near Waneta and Sevenmile Dams along the Pend Oreille River

Up to four different sediment types are proposed for collection at each of these locations.

Examples of sediment types are; coarse, fine, very fine, etc.

How were these locations determined?

For purposes of EPA's assessment, "background" or "reference" concentrations are established by collecting samples upstream or outside the influence of potential contaminant sources. Based on the location of potential contaminant sources to the portion of the Columbia River being assessed by EPA and the direction of River flow, the proposed locations in Canada are ideal "background" or "reference" sample locations.

When is the proposed sampling event?

Because it is important for EPA to complete all assessment-related activities within the statutory deadline of August 2002, the desired time frame to conduct sample collection is October 2001. Some examples of "assessment-related activities" are; sample collection and laboratory analysis, data validation, evaluation and interpretation of results, and report writing.

What are EPA's intended coordination efforts with Canada for this proposed sampling event?

EPA intends to fully coordinate and communicate planned sampling activities and schedule with Environment Canada and BC Ministry of Water, Land and Air Protection (WLAP) prior to conducting any sample collection activities in Canada.

Enclosure 2

Page 2

EPA will provide Environment Canada and WLAP early notice of its planned schedule. Both will be provided the opportunity to accompany EPA during field sampling activities, as well as the opportunity to assist in sample collection.

EPA will seek input from Environment Canada and WLAP staff regarding the proposed sample locations given their familiarity with River conditions and characteristics.

EPA will ensure the opportunity for Environment Canada and WLAP to obtain split samples.

EPA intends to provide Environment Canada with a copy of its Sampling Plan and has already provided WHAP with a copy of the Plan as part of the collaborative information sharing effort in the region.

EPA intends to provide Environment Canada and WLAP with a copy of the sample results as soon as it is available and will continue to keep both offices informed of EPA's activities related to the assessment of the U.S. portion of the Columbia River.

RECORD OF COMMUNICATION		<input type="checkbox"/> PHONE CALL <input type="checkbox"/> DISCUSSION <input type="checkbox"/> FIELD TRIP <input type="checkbox"/> CONFERENCE	
Participants:		<input checked="" type="checkbox"/> OTHER (SPECIFY) <u>Teleconference</u>	
TO: EPA Region 10 Office of General Counsel (OGC) Office of International Activities (OIA) US State Department Canadian Dept. of Foreign Affairs & International Trade		FROM:	DATE <u>4/25/2002</u> TIME
SUBJECT <u>EPA's proposed sampling in Canada at Lower Arrow Lake</u>			
SUMMARY OF COMMUNICATION <p>Monica Tonei, EPA Region 10 Site Assessment Manager, discussed:</p> <ul style="list-style-type: none"> - overview of Superfund site assessment process - overview of upper Columbia River site investigation and purpose of EPA's proposed sediment sampling at Lower Arrow Lake in Canada - chronology of EPA's communication with government of Canada dating back to Spring 2001 in seeking permission to conduct sampling in Canada - EPA's request regarding the 'excess' sediment samples currently in the possession of BC WLAP. <p>This was followed by Q & A.</p> <p>The teleconference wrapped up with Peter Fawcett of DFAIT assuring EPA that a determination on EPA's request would be made within 2 weeks.</p>			



Recorded by:
 Monica Tonei, April 25, 2002



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

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JUN - 6 2002

Reply To

Attn Of: ECL-115

Mr. Peter Fawcett, Deputy Director
United States Transboundary Division
Department of Foreign Affairs &
International Trade
Lester B. Pearson Building, Floor A-6
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Dear Mr. Fawcett:

I am writing as a follow-up to the teleconference of April 25, 2002, between U.S. and Canadian government staff regarding the request by the U.S. Environmental Protection Agency (EPA) to collect sediment samples from Lower Arrow Lake in Canada. We have also requested the extra volume of sediment collected by the British Columbia Ministry of Water, Land and Air Protection (WLAP) during its past Columbia River monitoring effort.

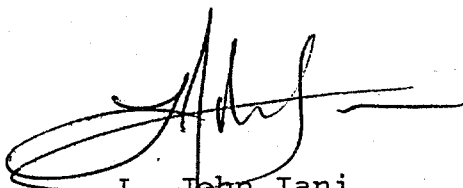
I appreciate your taking the time to speak with my staff on these matters. As discussed during the teleconference, the dialogue between U.S. and Canada regarding EPA's request to obtain access to Lower Arrow Lake was initiated in the Spring of 2001. The Region appreciated the commitment by you to respond to our requests within two weeks of the April 25 teleconference and remains hopeful that a response is forthcoming. To streamline the process, please include in your letter a designated contact for future reference.

EPA is continuing to consider all possible options in establishing "background" concentrations for its ongoing investigation of hazardous substance contamination along the U.S. portion of the upper Columbia River in northeast Washington. The Region will be reviewing the quality and usability of analytical data provided by The Confederated Tribes of the Colville Indian Reservation pertinent to sediment samples collected from the Columbia River Basin in Canada. In accordance with the government-to-government relationship between EPA and the Tribes, EPA is obligated to consider and review the quality and usability of this information. A copy of the analytical data has been provided to Canadian federal government staff.



Thank you for your valued involvement in this matter. We look forward to your written response to our requests and future cooperation between both countries in addressing contamination issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. John Iani', with a large, stylized loop at the beginning and a horizontal line extending to the right.

L. John Iani
Regional Administrator

cc: Christine Todd Whitman, EPA Administrator
Mike Gallagher, US Embassy-Ottawa
Marianne Horinko, EPA Office of Solid Waste and
Emergency Response
Judith Ayers, EPA Office of International Activities
Pete Christich, EPA Office of International Activities
Eric Running, U.S. State Department
Tom Fitzsimmons, Director, WA Department of Ecology
Derek Thompson, Minister of BC - Water Land & Air
Protection (WLAP)
Tim Hodges, Canadian Embassy



125 Sussex Drive
Ottawa, Ontario
K1A 0G2

January 17, 2003

NUE-0007

Mr. Curtis Stone
Environment, Science and Technology Counsellor
Embassy of the United States
490 Sussex Drive
Ottawa, Ont.
K1N 1G8

Dear Mr. Stone: *Curtis,*

I am responding to a letter from Michael Gallagher of October 3, 2001 regarding the request by the U.S. Environmental Protection Agency (EPA) to collect sediment samples from locations along the Columbia and Pend Oreille Rivers in Canada as part of the Superfund program. I regret the delay in replying to you, but this unprecedented request has raised several policy and legal questions that required further investigation.

As you may know, there is a high degree of cooperation and information sharing on many scientific and technical environmental matters between EPA Region 10 and Environment Canada, the BC Ministry of Water Land and Air Protection (WLAP) and others. We strongly support this cooperation, which has resulted in many initiatives to promote enhanced environmental protection.

We understand that a petition has been filed with EPA to determine if Lake Roosevelt is a priority site for clean up under the Superfund program and the request to conduct sampling according to EPA protocols in Canada is to assist in this determination. However, as this request is outside the normal range of our bilateral cooperation and could ultimately lead to liability for the costs of clean up of the site, we felt it was necessary to investigate the possible implications for Canada.

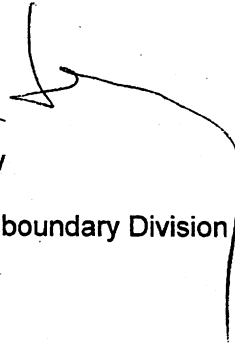

In this case, the potential liability would be in relation to historical accumulations of pollutants, rather than current discharges, which continue to be monitored through ongoing, pollution prevention regimes. This would be particularly worrisome, as we understand from discussions with WLAP and Environment Canada officials, the Canadian companies in question have a record of compliance with federal and provincial regulations and have invested in substantial upgrades to the facilities in order to better control discharges.

As Mr. Gallagher mentioned in his letter, there are collaborative efforts between the EPA region and WLAP on monitoring conditions along the Columbia River. We understand that the WLAP's data and analysis based on annual surveys of conditions along the River have been made available to the EPA. We also note that the EPA has received data based on sampling in the Columbia and Pend Oreille Rivers from a private company in Canada.

As this is the first such request received, federal authorities actively considered the potential implications and ramifications. Officials from this Department met with officials from the US State Department and the EPA, including Region 10, via telephone, in Washington, D.C. on April 25, 2002, to discuss the background and nature of this request. The EPA outlined the Superfund process that is to be followed, in response to the petition received.

It is not the intention of this Department to reduce or diminish the excellent cooperative efforts between the different federal, state and provincial participants to protect and enhance environmental conditions. However, in the absence of a clearly defined framework to address issues of reciprocity, sovereignty and liability, we are not prepared to accede the request from the EPA.

Yours sincerely,



Bruce Levy
Director
U.S. Transboundary Division

c.c. Ms. Jenna McKay-Alie, Environment Canada